

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

EDGAR CISNEROS,)	
)	
Claimant,)	IC 2003-522158
v.)	
)	
AARDEMA DAIRY LP,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Employer,)	AND RECOMMENDATION
and)	
)	
IDAHO STATE INSURANCE FUND,)	FILED APR 24 2007
)	
Surety,)	
Defendants.)	
)	

INTRODUCTION

The Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing near Boise on March 27, 2007. Claimant appeared *pro se*. Neil D. McFeeley represented Defendants. The parties presented evidence. Defendants were allowed additional time to review and to object to Claimant's documentary evidence, which was submitted outside the parameters of J.R.P. Rule 10. Upon review, Defendants did not object to any documents contained in Claimant's proposed exhibit. There were no post-hearing depositions taken nor briefs submitted. The case came under advisement on April 9, 2007. It is now ready for decision.

ISSUES

After due notice and by agreement of the parties at hearing, the issues to be resolved are:

1. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident.

2. Whether and to what extent Claimant is entitled to:
 - a. temporary disability;
 - b. permanent disability in excess of impairment; and
 - c. medical care benefits.

CONTENTIONS OF THE PARTIES

Claimant contends he suffered, in addition to the undisputed, compensable hand injury, an injury to his elbow at the time of the accident. He suffered permanent loss of grip strength in his hand and other continuing symptoms in his elbow and forearm. He needs additional medical care. His treating physician is untrustworthy and incompetent. Doctors' entries on medical records are inaccurate and contrary to the doctors' comments at the time of examination. Employer fired him under pretext, claiming Claimant failed to telephone his absence for a doctor visit.

Defendants contend they have paid for all medical care, permanent impairment, and temporary and permanent disability which Claimant suffered as a result of the accident. Following surgery, his treating physician released Claimant to full duty with no restrictions.

EVIDENCE CONSIDERED

The record in the instant case consists of the following:

1. Hearing testimony of Claimant;
2. Claimant's Exhibit 1; and
3. Defendants' Exhibits 1 – 7.

After fully considering the record, the Referee submits the following findings of fact, conclusions of law, and recommendation for review by the Commission.

FINDINGS OF FACT

1. Claimant worked as a mechanic and welder. On October 27, 2003, he was ordered to drive truck. He fell while slamming a tailgate on his truck. As he fell, he caught his

right hand and wrist in a moving belt chain. He was unable to jerk his hand free at first. He notified Employer he had crushed his hand and sought medical care.

2. Claimant was treated by Douglas Stagg, M.D., and Dell Smith, M.D. In addition to the lacerations and soft-tissue crush injury, he suffered an injury to his median and ulnar nerve at the right wrist. The injury was treated conservatively. Claimant's symptoms improved, but did not completely resolve.

3. Claimant fell again, at home, on January 27, 2004. He broke his leg. He did not suffer additional permanent injury his hand or arm.

4. Right wrist X-rays taken February 9, 2004 showed no abnormalities.

5. Claimant underwent physical therapy for about 14 weeks. He improved somewhat, but not entirely.

6. Hand surgeon William D. Lenzi, M.D., first saw Claimant on March 5, 2004. X-rays and an MRI were negative. EMG and nerve conduction velocity test (NCV) showed a pinched ulnar nerve at the elbow and carpal tunnel syndrome. Dr. Lenzi opined Claimant's carpal tunnel was related to the accident. He found it more difficult to relate the ulnar nerve condition to the accident.

7. On April 2, 2004, an MRI showed no abnormality in Claimant's right wrist.

8. On April 15, 2004, Dr. Lenzi opined Claimant's PPI at 21% of the right upper extremity. He opined Claimant's hand and arm injuries combined to create a 13% whole person permanent impairment. Upon prompting by Surety, Dr. Lenzi reduced his PPI to 4% whole person.

9. In November 2004, considering the cost and the equivocal relationship of Claimant's ulnar nerve condition to the accident, Dr. Lenzi recommended performing

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 3

the carpal tunnel release first, and later giving consideration to the question of an ulnar nerve surgery.

10. About December 2004, Claimant began working as a home builder.

11. On June 21, 2005, John W. Howar, M.D., evaluated Claimant. He performed bilateral EMG/NCV tests. He opined Claimant showed bilateral ulnar and median nerve compression, worse on the right. He attributed the left-sided symptoms to swelling from greater left-handed exertion in response to right-sided pain. He opined the right-sided symptoms were related to the industrial accident.

12. On August 8, 2005, Claimant visited Paul Collins, M.D., for an evaluation at Defendants' request. He agreed with Dr. Lenzi's impairment rating. He suggested a repeat EMG/NCV to assess the ulnar nerve condition. He opined the relationship of the accident to Claimant's median nerve complaints "probable" and to ulnar nerve complaints "possible."

13. On October 26, 2005, Claimant visited physiatrist Michael R. McMartin, M.D. He performed an EMG which showed no abnormality in Claimant's right elbow.

14. On May 26, 2006, Dr. Lenzi performed a carpal tunnel release surgery with decompression of the ulnar nerve in Guyon's canal.

15. On July 18, 2006, Dr. Lenzi released Claimant to full duty without restrictions.

16. On October 12, 2006, Claimant returned to Dr. Lenzi with complaints. Dr. Lenzi diagnosed flexor tenosynovitis through the cubital tunnel of his right elbow. Dr. Lenzi attributed this condition to subsequent work unrelated to the initial accident.

17. Claimant has continuing pain and grip strength weakness.

18. Claimant fired his former attorney over a dispute about whether he would receive PPI benefits monthly or in a lump sum.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 4

19. At the time of the accident, Claimant earned \$8.50 per hour on a full-time basis.

20. Claimant's correspondence shows Claimant can read and write with proficiency sufficient for the types of jobs he has previously held. He has transferable skills. He presents himself in a way that would not hinder his ability to compete in the local labor market. The scars from the accident and surgery on his right hand and wrist are not disfiguring in a way that would adversely affect his competitiveness for jobs. No nonmedical factors support a finding of permanent disability in excess of permanent impairment.

DISCUSSION AND FURTHER FINDINGS OF FACT

21. **Causation.** A claimant must prove he was injured as the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 918 P.2d 1192 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 901 P.2d 511 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 890 P.2d 732 (1995).

22. Here, Claimant established he injured his right wrist and elbow in the industrial accident. Defendants provided medical treatment. Diagnostic testing showed the conservative treatment to his elbow resolved the ulnar nerve problem. Surgery resolved the median and ulnar nerve problems in his wrist.

23. During Claimant's recovery, some doctors expressed concern about potential long-term problems. Claimant's subjective complaints correspond with these concerns. However, objective diagnostic testing is inconsistent with some of Claimant's subjective complaints. Medical opinion does not support a finding of a causal relationship of other

subjective complaints. Finally, impairment was paid for subjective complaints deemed by medical opinion to be causally related.

24. Claimant's dissatisfaction over Dr. Lenzi's "bedside manner" does not undermine the weight assigned to Dr. Lenzi's opinions. Claimant failed to show his continued elbow symptoms are related to the industrial accident. No medical doctor has opined Claimant's elbow symptoms after July 18, 2006 were related to the accident.

25. Claimant believes his subsequent fall on January 27, 2004 is related to the original industrial accident. He believes that his lack of grip strength prevented him from shoveling away the ice on which he slipped. He believes that his lack of grip strength prevented him from catching himself as he fell. Thus, he believes his hand condition caused his broken leg. Claimant failed to produce a supporting medical opinion. Claimant's complaints related to the January 27, 2004 fall at home are not compensable.

26. **Temporary Disability.** Documents provided by Claimant establish Defendants paid temporary disability. Claimant failed to show the amounts or time periods of TTD were incorrectly calculated.

27. **Impairment and Disability.** Claimant's injury and continuing pain and grip strength weakness were rated and PPI was paid. The PPI award appears to have been correctly calculated. Claimant's dissatisfaction over his continuing symptoms is not additionally compensable as impairment. Claimant's dissatisfaction over having received monthly payments instead of a lump sum and over the amount of compensation does not provide a basis for additional compensation.

28. Claimant failed to show he is entitled to disability in excess of impairment.

CONCLUSIONS OF LAW

1. Claimant suffered a compensable accident on October 27, 2003. He received medical, TTD, and PPI benefits for the injuries causally related to that accident;
2. Claimant failed to show it probable that other conditions and symptoms were related to the industrial accident;
3. Claimant failed to show he is entitled to additional medical, TTD, or PPI benefits;
4. Claimant failed to show he is entitled to permanent disability in excess of permanent impairment.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own and issue an appropriate final order.

DATED this 18TH day of April, 2007

INDUSTRIAL COMMISSION

ATTEST:

/S/ _____
Douglas A. Donohue, Referee

/S/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 24TH day of APRIL, 2007, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

Edgar Cisneros #48457
SICI ND-F-25
P.O. Box 8509
Boise, ID 83707

Neil D. McFeeley
P.O. Box 1368
Boise, ID 83701

db

/S/ _____

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EDGAR CISNEROS,)	
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Claimant,)	IC 2003-522158
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AARDEMA DAIRY LP,)	ORDER
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Employer,)	
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IDAHO STATE INSURANCE FUND,)	FILED APR 24 2007
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Surety,)	
Defendants.)	
)	

Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue submitted the record in the above-entitled matter, together with his proposed findings of fact and conclusions of law to the members of the Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant suffered a compensable accident on October 27, 2003. He received medical, TTD, and PPI benefits for the injuries causally related to that accident.
2. Claimant failed to show it probable that other conditions and symptoms were related to the industrial accident.
3. Claimant failed to show he is entitled to additional medical, TTD, or PPI benefits.
4. Claimant failed to show he is entitled to permanent disability in excess of permanent impairment.

ORDER - 1

5. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this 24TH day of APRIL , 2007.

INDUSTRIAL COMMISSION

/S/_____
James F. Kile, Chairman

/S/_____
R. D. Maynard, Commissioner

/S/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

/S/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 24TH day of APRIL , 2007, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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